The obligation to use official forms for statements of reasons and judicial sentencing justification: insights from Polish criminal procedure

A obrigatoriedade de utilização de formulários oficiais para a exposição de motivos e a fundamentação de sentenças judiciais: perspectivas do processo penal polonês

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Abstract: This article examines the use of official forms for drafting statements of reasons. It presents the obligation to use such forms as a particularly interesting regulatory idea, while emphasizing that it must not replace individualized, comprehensible sentencing motivation. From the European perspective, the analysis is framed by the requirement of a fair criminal trial under article 6 of the European Convention on Human Rights, treating reasoning as a key element enabling meaningful review and informing the parties of the grounds for the decision. This article investigates the effects of form-based justification on the quality and guarantee function of court reasoning. Using a qualitative doctrinal and jurisprudential analysis, it assesses the extent to which template-structured statements of reasons substantively reflect sentencing

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premises, including a clear and reviewable link between factual findings, legal qualification, and normative reasoning leading to a specific penalty. It further identifies practical standards for adequate justification: derived from legal norms and developed in case law and doctrine focusing on completeness, individualization, and internal coherence enabling effective appellate review. In conclusion, the paper underscores that even when forms are used, the statement of reasons must remain sufficiently detailed and logically coherent to prevent arbitrariness and to sustain effective appellate control.

Keywords: judicial reasoning; criminal fair trial; official form; penalty.

Resumo: *Este artigo examina o uso de formulários oficiais para a redação da fundamentação de decisões judiciais. Apresenta a obrigatoriedade de utilização desses formulários como uma ideia regulatória de particular interesse, ressaltando, contudo, que ela não deve substituir uma fundamentação da sentença que seja individualizada e compreensível. Sob a perspectiva europeia, a análise fundamenta-se na exigência de um processo penal justo, nos termos do artigo 6.º da Convenção Europeia dos Direitos Humanos, tratando a fundamentação como um elemento-chave que viabiliza uma revisão efetiva e informa as partes sobre os motivos da decisão. O artigo investiga os efeitos da fundamentação baseada em formulários sobre a qualidade e a função garantista do raciocínio judicial. Por meio de uma análise qualitativa, doutrinária e jurisprudencial, avalia em que medida as fundamentações estruturadas em modelos refletem substancialmente as premissas da sentença, incluindo um nexo claro e passível de revisão entre as constatações fáticas, a qualificação jurídica e o raciocínio normativo que conduzem a uma pena específica. Identifica, ainda, padrões práticos para uma fundamentação adequada (derivados de normas jurídicas e desenvolvidos na jurisprudência e na doutrina), com foco na completude, na individualização e na coerência interna, de modo a permitir uma revisão recursal efetiva. Em conclusão, o trabalho enfatiza que, mesmo quando se utilizam formulários, a fundamentação deve permanecer suficientemente detalhada e logicamente coerente para evitar arbitrariedades e sustentar um controle recursal eficaz.*

Palavras-Chave: *fundamentação judicial; julgamento criminal justo; formulário oficial; pena.*

Summary: Introduction; 1. The reasoning of a judgment as an element of a fair criminal trial in Europe (article 6 of the Human Rights Convention); 2. Template justice or real motivation? The guarantee

function of sentencing reasoning under the obligation to use official forms; 3. Fulfilment of the court's duty to give reasons for the sentence versus the mandatory requirement to draft the statement of reasons using an official form. 4. From algorithmic assistance to judicial accountability: the role of AI and the guarantee function of sentencing reasoning; Final considerations; References.

Introduction

In criminal proceedings, courts issue rulings of varied character: ranging from decisions that shape the course of the proceedings, through rulings concerning evidentiary procedure (dismissing or admitting particular evidence), to decisions that terminate the proceedings, as well as rulings within the framework of appellate review. Although these decisions differ in the scope of their reasoning and in their procedural configurations, they are all bound by a common standard: the obligation to provide proper justification.

This duty is not merely of a technical function. A statement of reasons serves as a mechanism that legitimizes the exercise of judicial power in a democratic rule-of-law state, ensures the transparency of the court's reasoning, and enables the parties and appellate bodies to verify that reasoning. As a result, a justification guarantees that the decision rests on rational grounds rather than arbitrariness or only intuitive premises.

At times, especially in incidental matters (such as when an evidentiary motion is dismissed) the justifications are very brief. In other situations, already at the moment the judgment is delivered in court, the court is obliged to provide orally the key reasons for its ruling, so that the parties present in the courtroom and the public can learn the grounds on which the court reached that decision rather than another one. It is worth noting that, in the Polish criminal process, the court of first instance prepares a written statement of reasons within 14 days from the date on which a party files a request (e.g., the prosecutor, the accused, or the accused's defense counsel). Very often, parties do not file such a request and instead accept the oral reasons given by the court.

With the development of modern technologies and their use in the administration of justice since the beginning of the 21st century, a phenomenon has been observed in which judges have produced increasingly extensive written justifications, even in relatively straightforward cases[2]. Among other reasons (these will be discussed more extensively later) since 2019 Polish criminal procedure has required that written statements of reasons for judgments be prepared using official forms. It should be emphasized that, under the Polish model, reason-giving in the form of a template in criminal proceedings (currently in force) creates a particular relationship between the requirements of efficiency of the procedure and the need to individualize the decision in light of the statutory grounds.

In the Polish procedural design, form-based justifications may influence how the court presents the grounds for its ruling, and therefore the perception of the judgment's rationality and the possibility of appellate control. Consequently, statements of reasons prepared in this form require analysis in terms of the proper presentation of the court's sentencing directives referred to in article 53 of the Polish Penal Code[3] (hereinafter: k.k.), because it is precisely in these grounds that the normative content of the sentencing decision is revealed: emphasis on the aims of punishment, the degree of culpability, and the circumstances affecting its measure. In this part of the justification, the court is also required to indicate how the imposed sentence will achieve the goals of individual prevention toward the accused and the goals of general prevention toward society as a whole.

The form-based model of justification is not merely a tool that facilitates the drafting of procedural pleadings; it may also potentially affect the quality of the court's reasoning. On the one hand, it can promote the standardization of motivational patterns, reduce elements that individualize the decision, and shift the focus from the actual reasons for the ruling to filling in the relevant boxes. On the other hand, the form may also stabilize the minimum content standard of the justification, increase the completeness of the argument, and limit the phenomenon

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[2] BŁOŃSKI M., Uzasadnienie wyroku sporządzone na formularzu a prawo do rzetelnego procesu, [Judgment Reasoning Drafted on a Form and the Right to a Fair Trial], Przegląd Sądowy Nr 11-12/2024, p. 34.

[3] Act of 6 June 1997 Polish Penal Code (consolidated text, Journal of Laws of 2025, item 383, as amended).

of omitting important elements of reasoning, while simultaneously expanding argumentation that does not, in practice, have real significance for sentencing.

It is precisely this twofold character, both the risk of excessive schematization and the possibility of supporting guarantee standards that gives the analysis carried out in this article its cognitive value.

The primary aim of this article is to determine to what extent the template-based character of judgments' justifications affects the manner in which the court supports the sentencing directives indicated in article 53 of the Polish Penal Code. At this point, it is appropriate to ask whether, in a written justification, the court currently refers to the premises that influence the imposition of punishment, and, if so, to what extent. In addition, it seems justified to ask whether the justification contains a clear and verifiable linkage between the factual findings (concerning the act and personal circumstances), the legal qualification, and normative reasoning leading to a specific decision as to the type and level of the sentence.

A second goal of this article concerns the identification of standards of justification, both those derived from legal norms and those developed in jurisprudence and doctrine in their practical dimension: which elements should be reflected in the motives of the judgment, particularly when the form imposes a specific sequence and structure of the statement. In this sense, the article seeks to answer whether the obligation to prepare a template-based justification functions as a tool ensuring the repeatability and completeness of reasoning, or whether it may lead to formalism in which important sentencing premises are declared but not actually argued.

The third aim is analytical and critical: it is to detect and describe mechanisms that may cause differences between the "justification required" and the "justification provided" especially in the relationship between the elements of the justification and the directives from article 53 of the Penal Code. Accordingly, the quality of the argument matters: the level of concretization of the motives, the degree of individualization, the internal coherence of the justification throughout the entire line of reasoning (from findings to the decision on the sentence), and also whether the justification enables appellate (instance-based) review of that reasoning.

The fourth, complementary aim (builds on the previous ones) consists in formulating conclusions regarding good practices and recommendations. This involves identifying solutions that could reduce the risk of schematization and strengthen the guarantee function of the justification. In this area, it is necessary to examine whether there are ways through editorial and argumentative techniques to remove limitations connected with the obligation to prepare a form-based justification, so that article 53 of the Polish Penal Code is not reduced to general clauses, but its application to the specific circumstances established in the case is demonstrated.

In the context of drafting the reasoning of a judgment using an official form pursuant to article 99a (1) of the Polish Code of Criminal Procedure[4] (hereinafter: k.p.k), it is also worth noting the European standard arising from Article 6(1) of the European Convention on Human Rights (hereinafter: ECHR), which will also be addressed in this article.

1. The reasoning of a judgment as an element of a fair criminal trial in Europe (article 6 of the Human Rights Convention)

With regard to the issue of preparing a judgment on an official form, it should be noted that the case-law of the European Court of Human Rights indicates that the reasoning in a criminal judgment is one of the fundamental elements of the right to a fair criminal trial guaranteed by article 6 of the European Convention on Human Rights (ECHR). A fair trial[5] does not end with the issuance of the decision itself: the court is required to explain the reasons for its ruling. The scope within which this obligation to give reasons applies may vary depending on the nature of the decision and must be determined in the light of the circumstances

[4] Act of 6 June 1997 Polish Code of Criminal Procedure (Journal of Laws of 2026, item 460, as amended).

[5] KŁOPOCKA-JASIŃSKA Maria (2022). Constitutionalisation of the right to a fair criminal trial as a process inspired by constitutional courts, Brazilian Journal of Criminal Procedure, 8(1).

of the particular case[6]. In Taxquet v. Belgium[7], the Court held that the absence of reasons or poor reasoning of the decision (in the context of criminal proceedings involving a jury) may lead to a violation of the right to a fair trial with a key consequence for the ability to understand the decision and to verify that the conviction is not arbitrary. While the scope of the obligation to provide reasons may differ depending on the type of decision and the circumstances of the case, it is necessary to ensure the transparency of the decision that has been taken[8].

Article 6 of the ECHR reflects the rule of law principle that underlies the Convention[9]. The provision lays down a catalogue of safeguards designed to secure a fair trial, and the fair trial principle is one of the most important, yet also most general, standards guiding the assessment of whether criminal proceedings comply with the requirements of a democratic rule of law state[10]. According to P. Wiliński, a fair criminal process is one that ensures that the participants are able to vindicate interests protected by law, while also providing the procedural organs with such procedural framework as serves that purpose[11]. In attempting to define the concept of a fair trial, P. Hofmański points to the problem of the relationship between the fair-trial principle and other safeguards

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6 Judgment of the European Court of Human Rights of 9 March 2023 in the case of Cupiał v. Poland (application no. 67414/11); the Court also pointed out that the domestic courts had not provided an exhaustive statement of reasons for their decisions, thereby failing to meet one of the requirements of a fair trial.

7 Judgment of the European Court of Human Rights of 16 November 2010 (application No. 926/05).

8 GOSS Ryan, Criminal Fair Trial Rights, 2016.

9 Judgment of the European Court of Human Rights of 8 December 1983, 8273/78, Axen v. Germany, § 25; judgment of the European Court of Human Rights of 21 February 1975, 4451/70, Golder v. the United Kingdom, § 36.

10 BACHMAIER Winter L. (2025). The fight for fair trial rights and the paradigm shift in evidence: from liberalism to mass surveillance in criminal proceedings in Europe. Brazilian Journal of Criminal Procedure, 11(1).

11 WILIŃSKI Paweł, O koncepcji rzetelnego procesu karnego [On the Concept of a Fair Criminal Trial], (in:) J. Skorupka, W. Jasiński (red.), Rzetelny proces karny. Materiały konferencji naukowej. Trzebieszowice 17-19 września 2009 r., Warsaw 2010, p. 176.

expressly set out in article 6 of the Convention[12]. One possible solution is to treat the fair-trial principle as an overarching principle encompassing the safeguards from article 6 as well as those that form the so-called minimum criminal-procedural standard. The view of M. Rogacka-Rzewnicka should be shared: regardless of how many meanings are attributed to it, the term "fair trial" most clearly defines the contemporary paradigm of criminal procedure[13]. It should be emphasized that article 6 of the Convention defines not only the basic institutional elements of the administration of justice, but also subjects the functioning of courts to the obligation to comply with an equal set of procedural guarantees[14].

The Court views article 6 of the Convention as a dynamic rule setting out the essential framework of the entire concept of the right to a fair criminal trial, comprising both safeguards expressly stated in that provision and safeguards derived from it through interpretation[15]. The indeterminacy of the fair trial principle allows the Court, in its case-law, to take into account that aspect and to assess compliance with (or failure to comply with) the principle by reference to the spirit of the time. From this special position of the fair trial principle, scholarship draws two key conclusions. First, the member states of the Council of Europe have relatively limited discretion in shaping national regulations covered by article 6 of the Convention. Second, the fairness principle permeates the entire criminal procedure not only the principles governing the operation of the judiciary, but also everything connected with its structure.

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[12] HOFMAŃSKI Piotr, Konwencja europejska a prawo karne [The European Convention and Criminal Law], Toruń 1995, p. 238-239.

[13] ROGACKA-RZEWNICKA Maria, Znaczenie niepisanych reguł postępowania dla tworzenia podstaw rzetelnego procesu karnego [The significance of unwritten rules of conduct for establishing the foundations of a fair criminal trial], (in:) J. Skorupka (red.), Rzetelny proces karny. Księga jubileuszowa Profesor Zofii Świdy, Warsaw 2009, p. 92-93

[14] HOFMANSKI Piotr, WRÓBEL Andrzej (in:) L. Garlicki, Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności, Tom I, Komentarz do artykułów 1-18 [Convention for the Protection of Human Rights and Fundamental Freedoms, Volume I, Commentary on Articles 1–18], Warsaw 2010, p. 329.

[15] WILIŃSKI Paweł, Rzetelny proces karny, [A Fair Criminal Trial], Warsaw 2009, p. 103.

As J. Pradel observes, it is not enough for justice to be done; it must also be seen to be done[16]. The right to obtain a reasoning for a decision is an important element of the fairness of the proceedings[17]. Indeed, a reasoned judgment undoubtedly strengthens the transparency of the proceedings. It enables social scrutiny of the administration of justice and, at the same time, confirms that the parties were heard during the course of the proceedings[18].It should be noted that the particular significance and role of the reasoning of a judgment are also recognised in other legal systems. German criminal procedural doctrine likewise emphasises the special role played by the reasoning of a judgment. As C. Roxin writes, the reasons for a judgment must, in every case, clearly identify the legal and factual grounds for the decision[19]. In the case of a conviction, the sentence must be justified in detail. At the same time, it is emphasised that the written reasons for a judgment must not merely constitute a report on the course of the judicial proceedings as a whole[20]. On the other hand, the written reasons for the judgment must be clear and intelligible, since their purpose is to explain the factual findings made by the court and to set out the legal basis for the decision, thereby enabling a higher court to review the ruling[21].

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16 PRADEL J., Rzetelny proces w europejskim prawie karnym, [Fair Trial in European Criminal Law], Prokuratura i Prawo 1996, nr 9, p. 10.

17 SKORUPKA Jerzy, Jawność procesu karnego, [Publicity of Criminal Proceedings],, Warsaw 2012, p. 60

18 Judgment of the European Court of Human Rights of 22 February 2007, 1509/02, Tatishvili v. Russia, § 58; regarding the role of the reasoning of a judgment as an element of the right to a fair criminal trial in BRONIECKA R., Uzasadnienie wyroku w polskim postępowaniu karnym, [Statement of reasons for the judgment in Polish criminal proceedings], Warsaw 2014, p. 133-145.

19 ROXIN Claus, Schünemann Bernd, Strafverfahren rechts [Criminal proceedings law], München 2009, p. 147

20 MEYER – GROßNER Lutz, Strafprozessordnung mit GVG und Nebengesetzen [Code of Criminal Procedure, including the Courts Constitution Act and Ancillary Laws], München 2010, p. 1146, 1153.

21 KÜHNE Hans – Heiner, Strafprozessrecht. Eine Systematiszche Darstellung des deutschen und europäischen Strafverfahrensrechts [Criminal Procedural Law: A Systematic Exposition of German and European Criminal Procedural Law}, Heindelberg 2010, p. 603-605.

In this sense, a fair trial should be understood as one in which participants, regardless of their procedural role—can effectively pursue the legally protected interests vested in them, while procedural authorities act within procedural arrangements that ensure predictability, proportionality, and a genuine possibility of defence.

At the level of procedural practice, particular significance is attached to the problem of constructing the acts and decisions taken in criminal proceedings, including their formal legal basis in the form of templates. Forms, although by design they serve a technical purpose and are meant to standardize, in substance determine how information about the court's factual findings, the legal provisions applied, and the criminal-law reaction in connection with the offence committed is communicated. Template-based justifications may also facilitate the orderly conduct of procedural acts and contribute to ensuring consistency in the practice of justice institutions. Consequently, whether the applied forms meet the standards of a fair trial depends on whether they enable procedural safeguards to be implemented in a real not merely apparent way. A justification form should allow the correctness of the action of the authority to be verified (e.g., by clearly indicating the bases, the scope of the requests, or the instructions), while at the same time it must create conditions for a participant to be able to use their rights knowingly and effectively.

In this context, it is rightly observed that the fair-trial principle remains in a relationship with other safeguards contained in article 6 of the Convention and with elements of the minimum criminal-procedural standard. This means that fairness is not reduced to a general directive; rather, it requires translation into specific procedural mechanisms, including, among others, rules on the preparation of reasons and the scope of the information communicated to participants. Adopting an approach under which fair trial has an aggregate character therefore makes it possible to assess the standard of a fair trial also by reference to how justifications prepared using forms affect the real ability to defend oneself, participate in the proceedings, and effectively challenge the decisions. The use of an official form may constitute a manifest breach of the law, including the above-mentioned article 6 of the ECHR. However, in the Supreme Court's assessment, this occurs only when, due to the specific

features of the case, the form does not provide an appropriate tool for a clear and comprehensive presentation of the reasons for the decision[22].

At this point, it should be emphasized that reasoning serves not only a procedural function but also builds the authority of the administration of justice and shapes the external perception of the fairness of the decision. In its case-law, the Constitutional Tribunal indicates that the reasoning of a judgment is an important element of the right to the fair consideration of a case. The essential functions (the essence) of the constitutional right to the fair consideration of a case are closely connected with the functions generally attributed to judicial reasoning. Reasoning of judicial decisions is a decisive component of the right to a fair court as a constitutionally protected right of the individual[23].

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[22] The Supreme Court of 27 October 2022, case file no. IV KK 585/21. In the case under consideration, a cassation appeal was lodged against a cumulative sentence judgment joining sentences imposed on the same individual in several sets of proceedings. Among other things, defence counsel alleged a procedural violation arising from the laconic preparation of the written reasons using the prescribed form. It was argued that the nature and complexity of the case required the court to address in detail, in writing, all the grounds raised in the defence appeal, so as to enable both the convicted person and the higher courts to assess the correctness of the appellate court's reasoning. The Supreme Court dismissed the cassation appeal as manifestly unfounded. It held that the Regional Court had prepared its reasons in a clear and comprehensible manner, addressing the interpretation of the provisions relevant to the grounds of appeal and supporting its reasoning by reference to a judgment of the Constitutional Court. The importance and complexity of the case, as well as the structure of the appeal, did not justify departing from the form of reasoning prescribed by Article 99a § 1 of the Code of Criminal Procedure. The appellate court had addressed each ground of appeal in the appropriate section of the prescribed form, explaining why it considered that ground to be unfounded. There were therefore no grounds for concluding that this method of preparing the reasons had infringed, or even restricted, the constitutional and Convention rights of the convicted person.

[23] The Constitutional Tribunal of 11 April 2005, case no. SK 48/04. The complainant, J.K., sought a declaration of unconstitutionality regarding Article 535 § 2 of the Code of Criminal Procedure. This provision states: "The Supreme Court shall dismiss a cassation appeal at a hearing if it is manifestly unfounded. The parties may participate in the hearing. Dismissal of a cassation appeal as manifestly unfounded does not require a written statement of reasons." The complainant alleged that this provision violated Article 45(1) of the Constitution, arguing that procedural rules should be framed in

According to the Constitutional Tribunal[24], the judicial reasoning performs the following functions:

i. It compels self control on the part of the court which must demonstrate that the rulings is correct both materially and formally and satisfies the requirements of justice.

ii. It documents the arguments supporting the adopted ruling.

iii. It provides a basis for external review by higher – instance authorities.

iv. It serves to obtain the individual acceptance of the ruling[25].

v. It strengthens the sense of public trust and democratic oversight of the administration of justice

vi. It enhances legal certainty.

Judicial decisions of the Supreme Court also indicate the role played by judgments' reasons. In that context, it has been pointed out that the generality of reasoning, essentially indicating the court of first instance's authority to freely assess evidence, might be defensible only if the justification drafted by the court satisfies the requirements of article 424 of the Polish Code of Criminal Procedure. A judgment's reasoning is not a stenographic record of the deliberations on the judgment, nor merely a report on the course of those deliberations; it is a document prepared after the judgment has been delivered. It must present, in an ordered manner, the arguments considered during the deliberations,

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a manner that ensures a citizen's right to a public and fair hearing before a court, as enshrined in the cited constitutional standard.

[24] The Constitutional Tribunal of 16 January 2006, case no. SK 30/05. The legal challenges in this case concern the constitutional right to a properly defined procedure and the right to redress for harm caused by unlawful actions of public authorities. Article 535 § 2 of the Code of Criminal Procedure was characterized by restrictions on participation in cassation proceedings and limitations regarding the statement of reasons (specifically, the absence of a requirement to provide a written justification). The Constitutional Tribunal ruled that Article 535 § 2 of the Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws No. 89, item 555, as amended) is inconsistent with Article 2 in conjunction with Article 45(1) and Article 31(3) of the Constitution of the Republic of Poland.

[25] ARCANGELO Fedato M., KAZMIERCZAK Luiz. F. (2020). Pretrial detention, reasoning and proportionality: a proposal for the justification of judicial decisions. Brazilian Journal of Criminal Procedure, 6(1), 483-514.

as well as the arguments not considered there but supported by the evidentiary material, and it must provide a logical and complete answer as to why, in that particular case, that ruling and not another was issued.

The issue is therefore not whether defects in the reasoning concerning the assessment of all material evidence affected the content of the judgment. Rather, the point is that, as a rule, those defects do not allow for a reliable appellate review of the correctness of the reasoning of the court of first instance. For that reason, they must lead to quashing the appealed judgment of that court, unless, *in concreto*, the evidentiary conclusions in the case are extraordinarily obvious and the allegations raised in the appeal are manifestly unfounded, which makes the judgment amenable to review despite defects in the reasoning.

Accordingly, drafting the reasoning using an official form does not automatically mean that there has been a breach of the right to a fair criminal trial. Everything depends on how the court drafted it. If, in particular, such a justification allows the reasoning of the court to be verified and provides a logical and complete explanation of why, in the given case, that ruling rather than another was issued, then no breach occurs of the defendant's right, as part of the right to a fair trial, to be acquainted with the court's reasons.

2. Template justice or real motivation? The guarantee function of sentencing reasoning under the obligation to use official forms

The requirements as to the content of written justifications in criminal cases within the Polish criminal procedure are set out in article 424 (1) of the Code of Criminal Procedure. Pursuant to that provision, the justification should include a concise indication of which facts the court found established or not established, which evidence it relied on in this respect, and why it did not accept the opposing evidence, as well as an explanation of the legal basis of the judgment.

Article 424 (2) of the k.p.k. further provides that, in its judgment justification, the court must also cite the circumstances taken into account when determining the penalty, and in particular when applying

an extraordinary mitigation of punishment, preventive measures, and other rulings contained in the judgment.

It is also worth noting that article 424 (3) of the k.p.k. allows for a written justification to be prepared in a limited scope. Specifically, where a request is filed for a justification only as regards the ruling on punishment and other legal consequences of the offence, or for a justification of a judgment delivered under article 343[26], article 343a[27], or article 387[28] of the k.p.k., the justification must include at least an

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[26] This provision sets out the rules for considering a motion for conviction without a trial—a manifestation of the consensual approach in Polish criminal procedure. If the accused admits guilt, the circumstances of the offense and the issue of guilt are beyond doubt in light of their statements, and the accused's attitude indicates that the objectives of the proceedings will be achieved, further procedural steps may be dispensed with. Instead of filing a formal indictment, the prosecutor submits a motion to the court requesting the issuance of a conviction at a hearing and the imposition of penalties or other measures agreed upon with the accused for the alleged offense—measures that also take into account the legally protected interests of the victim. The agreement may also cover the specific ruling regarding the bearing of procedural costs (art. 335 § 1 of the Code of Criminal Procedure). Alternatively, the prosecutor may attach such a motion to the indictment—requesting a conviction at a hearing and the imposition of penalties or other measures agreed upon with the accused (while also considering the victim's legally protected interests)—provided that the circumstances of the offense and the accused's guilt are beyond doubt, the evidentiary statements made by the accused do not contradict established facts, and the accused's attitude indicates that the objectives of the proceedings will be achieved (art. 335 § 2 of the Code of Criminal Procedure).

[27] This provision sets out the procedure for considering a motion filed by an accused person charged with an offense punishable by a term of imprisonment not exceeding 15 years; such a person may, prior to being served with notice of the trial date, submit a motion for the issuance of a conviction and the imposition of a specific penalty or penal measure, the ordering of forfeiture, or the imposition of a compensatory measure, without the conduct of evidentiary proceedings. The motion may also concern a specific ruling regarding the bearing of the costs of the proceedings.

[28] Pursuant to article 387 of the Code of Criminal Procedure, until the conclusion of the first examination of all defendants at the main hearing, a defendant charged with an offense punishable by a term of imprisonment not exceeding 15 years may submit a motion for the issuance of a conviction and the imposition of a specific penalty or penal measure, the ordering of forfeiture, or the imposition of a compensatory measure, without the conduct of evidentiary proceedings. The motion may also concern a specific ruling

explanation of the legal basis of the judgment and the specified rulings. Thus, even in a limited scope, the justification must include the reasons for the penalty imposed.

Accordingly, although the provisions regulating the content of the judgment justification have not changed in recent years[29], it should be observed that Polish criminal procedure currently specifies the form of the judgment justification (article 99 of the k.p.k.). By the Act of 19 July 2019, which entered into force on 5 December 2019, article 99a was introduced into the Code of Criminal Procedure[30]. Under article 99a of the k.p.k., the justification to a judgment of a court of first instance, including an order for penalty and a combined judgment, as well as a judgment of an appellate court, and a judgment delivered in proceedings for the resumption of a case is to be prepared using a form according to a prescribed template. The models of the forms for judgment justifications, and the manner of completing them, bearing in mind the need to include the necessary information indicated by statute, in a way that enables the authorized party to lodge an effective legal remedy, and in a manner that allows proper appellate review in the event such a remedy is filed are specified by the Minister of Justice by means of an ordinance.

As stated in the explanatory memorandum to the draft act, the legislative project aimed to eliminate unnecessary formalism in proceedings, the existence of which in itself prolongs the proceedings in practice. One of those changes was the introduction of standardized forms

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regarding the bearing of the costs of the proceedings. If the defendant does not have a retained defense counsel, the court may, upon the defendant's request, appoint a defense counsel ex officio. The court may grant the motion for a conviction when the circumstances of the commission of the offense and the defendant's guilt raise no doubts, and the objectives of the proceedings will be achieved despite not conducting the full hearing; granting the motion is possible only if the prosecutor consents and the injured party, having been duly notified of the hearing date and informed of the possibility of the defendant submitting such a motion, does not object.

29 MARTYN Georges, SONTAG Ricardo, (2021). Can Criminal Procedure Ever Be "Modern"? A Historical Comparative Perspective (Editorial of the Dossier "History of Criminal Procedure in Modernity"). Brazilian Journal of Criminal Procedure, 7(2), 697.

30 Act of 19 July 2019 amending the Code of Criminal Procedure and certain other acts (Journal of Laws of 2019, item 1694, as amended).

of judgment justifications for courts of both first and second instance. In the authors' view, properly drafted template forms will make it possible to include all content required by procedural law and necessary to explain the reasons for a given judgment, to lodge a legal remedy, and to assess the merits of that judgment by the appellate court. Instead of extensive multi-page justifications (typically several dozen pages, and in larger cases even several hundred pages), the project proposed justifications based on templates. It was also pointed out that the existing system for preparing justifications is highly time-consuming, prolongs proceedings, and unduly absorbs judicial resources (which should in principle be devoted primarily to adjudication), to the extent that judges must organize their work in practice so as not to overload themselves with complex cases in which they would have to prepare such justifications. Attention was also drawn to the fact that justifications are often written in a convoluted language that is not understandable to the parties, are unnecessarily burdened with case-law references, include repetitions, are structurally unclear (e.g., it is not obvious where to find the court's considerations on certain topics). According to the project authors, the desired effect cannot be achieved by changing practice alone, since justifications are drafted to meet the expectations of the courts performing procedural review of judgments (in the course of appeal, cassation, etc.). In their view, the optimal solution was to introduce forms for judgment justifications. Such a format organizes the structure of the justification, requires the use of shorter, more specific linguistic constructions that are easier for the parties to understand, and would also not compel the drafting of lengthy, multi-page justifications. Judges could thus spend considerably less time on writing justifications, without detriment to their substantive content, to the benefit of the adjudicative work they perform and the efficiency of proceedings. At the same time, the justification must satisfy all substantive criteria indicated in article 424 of the k.p.k.[31]

It should be emphasized that drafting a justification using an officially specified form is mandatory in nature, meaning that the court of

[31] Explanatory memorandum to the government bill amending the Code of Criminal Procedure and certain other acts (Bill No. 3251), https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=3251 (accessed: 28 July 2026).

first or second instance is required, each time, to prepare the justification to the judgment it delivers using the form.

The obligation to prepare justifications in the template form is the subject of numerous rulings of the Supreme Court. In its jurisprudence, it is indicated that, following the entry into force of article 99a of the k.p.k., the practice of preparing judgment justifications using the prescribed model became the rule and the binding form for the justification of judgments of a court of first instance, including an order for penalty and a combined judgment, as well as of judgments of an appellate court and of judgments delivered in resumption proceedings. Although the legislature did not introduce any exceptions that would allow a judgment justification to be prepared in the traditional way (i.e., omitting the form), case-law has nevertheless recognized the need to assess whether this, undoubtedly simplified, presentation of the grounds for the decision violates fundamental procedural guarantees and deprives the parties of the right to learn the court's complete reasoning.

Under that view, if the appellate court finds that it cannot prepare a justification for its judgment in the form in a manner that guarantees the party's right to a fair appellate process, it must apply article 91 of the Constitution of the Republic of Poland directly and present its position together with its reasoning in a traditional manner, i.e., by omitting the form. However, apart from special and entirely exceptional situations, it cannot be assumed that the very question of the choice of the form of the justification traditional or one resulting from article 99a of the k.p.k. determines the assessment concerning the proper performance of the duty of due instance-based review and the presentation of the relevant reasoning in the written motives of the decision. Judicial practice supports the proposition that, as a rule, even when applying the solution resulting from article 99a the court is able to draft a justification that ensures the parties the opportunity to become familiar with the appellate court's reasoning and, where appropriate, to engage in discussion of the premises underlying its understanding[32]. Thus, the mere introduction

[32] Judgment of the Supreme Court of 15 December 2021, case no. V KK 248/20, LEX No. 3343331. In the case of J. S., K. W., and E. C.—who had been acquitted of the charge of committing the offense defined in Article 212 §§ 1 and 2 of the Penal Code—the Supreme Court, following a hearing held by the

of template forms for judgment justifications (article 99a of the k.p.k.) cannot automatically be interpreted as a violation of the standard of a fair criminal process[33]. Preparing the judgment justification in the official form pursuant to article 99a may constitute a manifest violation of the law, including the standard under article 6 of the ECHR. This occurs only when, due to the specific nature of the case, the form does not provide an appropriate tool for a clear and comprehensive presentation of the grounds for the ruling[34].

At this point, it should be clearly emphasized that the Polish Constitutional Tribunal holds that the reasoning of judicial decisions is a decisive component of the right to a fair court as a constitutionally protected right of the individual. In assessing any limitation of the principle of requiring judicial reasoning, it is necessary to conduct a detailed

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Criminal Chamber on December 15, 2021, regarding the cassation appeal filed by the private prosecutor's counsel against the judgment of the Regional Court in Poznań of November 28, 2019 (case file no. IV Ka 968/19)—which had upheld the judgment of the District Court in P. of June 14, 2019 (case file no. VIII K [...])—set aside the contested judgment and remanded the case for reconsideration in appellate proceedings.

[33] Supreme Court judgment of 21 April 2022, case no. II KK 165/22, LEX No. 3430954. The Supreme Court, having examined—within the Criminal Chamber—a cassation appeal filed by the defense counsel for M.P. (convicted of an offense under Article 199 § 2 of the Penal Code) against the judgment of the Regional Court in R. dated August 18, 2021 (case file no. V Ka [...])—which upheld the judgment of the District Court in G. dated December 15, 2020 (case file no. II K [...])—dismissed the cassation appeal as manifestly unfounded. The reasoning stated that the mere introduction of judgment justification forms (Article 99a § 1 of the Code of Criminal Procedure)—the specifics of which were set out in the Regulation of the Minister of Justice of December 5, 2019—cannot automatically be construed as a violation of the standard of a fair criminal trial.

[34] Supreme Court of 27 October 2022, case file no. IV KK 585/21, LEX No. 3554096. In the case of A.S. concerning a consolidated judgment, the Supreme Court—having examined, at a session of the Criminal Chamber on October 27, 2022, the cassation appeal filed by the convicted person's defense counsel against the judgment of the Regional Court in Katowice of June 18, 2021 (case file no. XXIII Ka 340/21), which upheld the consolidated judgment of the District Court in Chorzów of March 1, 2021 (case file no. VII K 476/20)—dismissed the cassation appeal as manifestly unfounded.

analysis of all factors, circumstances, and criteria[35]. The Constitutional Tribunal has emphasized that the justification of a decision is the basis for external review of that decision by a higher authority, because it documents the arguments supporting the adopted ruling. A fair, logical, and understandable for the party justification enables effective lodging of an appeal, since it gives the party the possibility to familiarize itself with the arguments supporting the court's decision[36].

In light of these critical views expressed in jurisprudence and criminal procedure scholarship, legislative work was initiated aimed at amending article 99a of the k.p.k. The proposed change was intended to abandon the obligation to draft justifications. Under the draft, the decision whether the justification would be prepared in the form would be made by the court in each individual case. The authors pointed out that the adopted template forms for judgment justifications do not always make it possible to include information regarding the course of the adjudicative process, in particular the arguments and reasoning that led the court to the ruling adopted. The templates are "hermetic," requiring certain evidence to be grouped within separate sections, either as regards factual findings or the assessment of evidence, such that, in some cases with complex subject matter or complex parties, they may lead to narrowing the implementation of the legal norm expressed in article 424 of the k.p.k.

As was correctly indicated in the case-law, the obligation to prepare a justification for a decision is not only a formal requirement; it also has significant substantive importance. By presenting the reasoning process that precedes the adoption of the decision, the justification is intended to enable the parties, and in particular the accused, to review it. Accordingly, it performs not only procedural functions, but also builds the authority of the administration of justice and shapes the external perception of the fairness of the decision[37]. A justification prepared using a form is legally permissible only if the court does not come to

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[35] The Constitutional Tribunal of 11 April 2005, SK 48/04, Z.U. 2005, No. 4A, item 45.

[36] Judgment of the Constitutional Tribunal of 16 January 2006, SK 30/05.

[37] The Court of Appeal in Gdańsk in its judgment of 17 June 2020 (II AKa 64/20, LEX no. 3055805.

the conclusion that the subject matter of the case does not allow it to prepare that document in this simplified form without violating the party's right to a fair process; that right has absolute priority over the court's entitlement to use such "helpful" office-technical solutions[38]. The proposed amendment ultimately did not enter into force, because the Act amending, inter alia, the wording of article 99a(1) of the k.p.k. was vetoed by the President of the Republic of Poland[39]. Thus, despite the attempt to change the provisions in this regard, the court is still required to prepare the judgment justification using the official form.

3. Fulfilment of the court's duty to give reasons for the sentence versus the mandatory requirement to draft the statement of reasons using an official form.

The positions of the Constitutional Tribunal and the Supreme Court cited above unmistakably indicate the role played by the reasoning of judgments—including, in particular, the portion devoted to the justification of the sentence.

Against the background of the currently applicable legal order, namely, in a situation where the court is required to draft the reasoning of a judgment using an official form, it is necessary to ask to what extent such justifications currently satisfy the requirements laid down in article 424 of the Code of Criminal Procedure, in the context of a proper justification of the sentencing directives contained in article 53 of the Penal Code. The court should explain what considerations it relied on in imposing on the accused the particular sentence in question, rather than a different

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[38] Explanatory memorandum to the government bill amending the Code of Criminal Procedure and certain other acts (Document No. 1600), https://www.sejm.gov.pl/sejm10.nsf/druk.xsp?nr=1600 (accessed: 28 July 2026).

[39] In the Polish legal system, an act passed by Parliament is submitted to the President of the Republic of Poland, who has three options within 21 days: (1) signing the act—a step followed by the President ordering its publication; (2) presidential veto—referring the act back to the Sejm for reconsideration (the Sejm may override the veto by a three-fifths majority of votes with at least half of the deputies present); or (3) a motion to the Constitutional Tribunal—having the Constitutional Tribunal examine the act's conformity with the Constitution.

one. The wording of article 424 of the Polish Code of Criminal Procedure indicates that the justification for the sentence has the same significance as setting out the factual and legal basis for the ruling delivered.

The foregoing provision of article 53 § 1 and 2 of the Polish Criminal Code establishes that, in adjudicating criminal matters, the court shall determine the penalty in the exercise of its statutory discretion, subject to the bounds set by law. In doing so, the court is required to take into account the degree of social harmfulness of the prohibited act, aggravating and mitigating circumstances, the punitive objectives oriented toward the socially educative function of the sentence, and the preventive objectives to be achieved with respect to the convicted person. Moreover, the severity of the penalty may not exceed the degree of culpability (fault).

In calibrating the penalty, the court shall, in particular, consider, especially in circumstances where the offence is committed to the detriment of a person who is particularly vulnerable by reason of age or health status, and where the offence is committed jointly with a juvenile the motivation and manner of conduct of the offender. The court shall also assess the nature and extent of the duties breached by the offender, the type and magnitude of the negative effects attributable to the offence, the offender's personal traits and living conditions, the offender's conduct and mode of life prior to the commission of the offence, and conduct following its commission. Particular emphasis shall be placed on efforts to repair the damage or to provide redress in another form satisfying the community's sense of justice, as well as on the conduct of the injured party (the victim).

In Polish criminal law doctrine, it is indicated that the rules governing the determination of the penalty incorporate a resolution of the values expressed within the legal system, which are intended to have a guiding (direction-setting) function for the court's reasoning in the process of sentencing. The court is obliged to give effect, as fully as possible, to those values which the legislator has emphasized within a specific argumentative model derived from the set of directives adopted. Accordingly, in its oral pronouncements as to the reasons for the judgment, as well as in the written statement of reasons, the court must indicate what it was guided by in issuing its decision. This entails an exact explanation

of the reasons and the criteria for selecting the penalty, including its scope and level. When justifying the sentence, the court must refer to all the sentencing directives set out in article 53 § 1 of the Polish Criminal Code, as well as to the directives applicable to the case under article 53 § 2[40]. Similarly, the court must demonstrate the reasons for applying, within the given case an institution of extraordinary aggravation or extraordinary mitigation of the penalty[41] By way of example, the court may explain why, in its assessment, the accused does not deserve a conditional discontinuance of the proceedings, or why there are no grounds to suspend execution of the custodial sentence imposed.

It should be emphasized that article 53 of the Criminal Code expresses the principle of specificity of penalties, which is closely connected with the penalty system adopted in Polish criminal legislation: a system of relatively determinate sanctions. Under that system, the legislator, in the sanctioning provision of the special statute penalizing a given prohibited act, specifies the type or types of penalties threatened and, within a framework, the range within which they may be imposed. A correlative duty of the court is to specify the penalty by determining the type of penalty imposed on the offender (sometimes multiple penalties) and by fixing its level or duration[42].

In legal doctrine, it is emphasized that, in everyday judicial practice, the portion of a judgment's reasoning devoted to the determination of the penalty (i.e., the applied criminal-law response) frequently fails to satisfy statutory requirements. This is because that part of the reasoning is often limited to a pair of cursory sentences containing terse, stereotyped expressions, which create the impression of a template mechanism—simply transplanted mechanically from one set of reasons previously drafted by a given judge to other cases.

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[40] Judgment of the Supreme Court of 27 July 2004, II KK 323/03, OSNKW 2004, No. 9, item 87.

[41] KRÓLIKOWSKI Michał, ZAWŁOCKI R., Kodeks karny. Część ogólna. Tom I. Komentarz. Art. 1–116 [Penal Code. General Part. Volume I. Commentary. Arts. 1–116], Warsaw 2021.

[42] STEFAŃSKI Ryszard A., Kodeks karny. Komentarz [Penal Code: Commentary], Warsaw 2026.

The reasoning as to the penalty imposed by the court of first instance is particularly significant because it allows the formulation of an appellate complaint alleging a manifest lack of proportionality of the penalty within the meaning of article 438(4) of the Polish Code of Criminal Procedure. Manifest disproportionality of the penalty, referred to in article 438(4) k.p.k., may arise only if, on the basis of the disclosed circumstances which should have had a decisive influence on the penalty, it can be assumed that there would have been a clear difference between the penalty imposed by the court of first instance and the penalty that should have been imposed by the appellate court as a result of a correct application of the sentencing directives provided for in article 53 of the Polish Criminal Code and the principles shaped by the case-law of the Supreme Court.

For this reason, the correct justification of the penalty fixed by the court is of crucial importance. A comprehensive but clear reasoning also matters for the implementation of the general preventive purpose of the sentence, not only with respect to the offender of the prohibited act, but also with respect to society as a whole. Positive general prevention, which article 53 k.k. requires the court to take into account, focuses on shaping the public's legal awareness by informing the public about the catalog of prohibited acts and the penalties imposed for violations of those provisions. It also includes communicating the effectiveness of the state's criminal justice institutions. In addition, the penalty serves the justice-related objective by demonstrating that each offender is punished within the limits of his or her culpability. A proportionate penalty that also satisfies the community's sense of justice can therefore be only a penalty that accounts for all sentencing directives governing its determination, in particular those contained in article 53 k.k.

Accordingly, the proper justification of the penalty should reflect the directives set out in article 53 k.k. and should contain information concerning: the degree of culpability (the penalty must not exceed the degree of culpability); the social harmfulness of the act (an analysis of the gravity of the act, the extent of the harm caused, the manner of commission, and the circumstances of the offense); individual prevention (preventive and educational objectives aimed at ensuring that the convicted person does not reoffend); and general prevention (shaping society's legal

awareness and sending a clear signal that the commission of an offense results in a penalty adequate to the conduct).

In judicial practice, therefore, this part of the reasoning should be divided into logically coherent blocks of argumentation, which should mirror the above-mentioned division.

The standardized form used for drafting judgments, i.e., official forms, often does not facilitate a proper justification of the penalty and criminal measures applied by the court. Owing to the limited space in the form allocated to this part of the reasoning, the court frequently indicates only in headline form which mitigating circumstances (e.g., prior non-conviction) and which aggravating circumstances (e.g., commission of the prohibited act in conditions of recidivism) influenced the determination of the penalties. Of course, when drafting the reasoning on the form, the judge may modify the individual fields as to their scope and length. However, that also affects the readability and clarity of the reasoning.

This problem is particularly acute in cases that are complex both subjectively and objectively namely, cases involving multiple accused persons who are attributed the commission of multiple offences. In such situations, the court is obliged to justify the imposition of each individual penalty for each offence, and subsequently to justify the determination of the aggregate penalty resulting from the combination of the aforementioned individual penalties. The court should explain why the penalty imposed is adequate to the degree of culpability and the social harmfulness of the offence, and also whether that penalty satisfies the requirements of individual prevention in relation to the accused, as well as general prevention in relation to society.

In my assessment, this justification cannot consist solely in citing the premises contained in article 53 of the Polish Criminal Code without relating them to the specific circumstances of the case. In particular, article 53(2a)[43]

[43] Aggravating circumstances include, in particular: 1) a prior criminal record for an intentional offense or a similar unintentional offense; 2) taking advantage of the victim's helplessness, disability, illness, or advanced age; 3) a modus operandi that humiliates or torments the victim; 4) committing the offense with premeditation; 5) committing the offense out of a motive deserving of particular condemnation; 6) committing the offense out of hatred based on the victim's national, ethnic, racial, political, or religious affiliation,

and (2b)[44] k.k. provides an open (non-exhaustive) catalog of aggravating and mitigating circumstances which the court is required to take into account when determining the penalty. Therefore, in the part of the reasoning devoted to sentencing, the court should address the statutory sentencing directives and premises that determine the choice of penalty in light of the circumstances of the case, and explain why it applied certain legal institutions or why it did not and why it considered it fair to impose the penalty in that particular scope rather than another[45].For example, in the statement of reasons for a judgment of the Katowice Court of Appeal dated 6 May 2022, the court held as follows:"the conduct of the accused, who was charged with engaging in sexual contact with a person under 15 years of age, was intentional and persistent, and was directed at minors returning from school. His persistence in attempting to lure and detain the victims in his vehicle undoubtedly demonstrates that he was determined to achieve his planned objective and was motivated by an immediate desire, despite the risk of being apprehended in a public place. His previous convictions also constituted an aggravating circumstance. All of these factors demonstrate that the accused is a demoralised person

or lack of religious affiliation; 7) acting with particular cruelty; 8) committing the offense while under the influence of alcohol or an intoxicating substance, if such state was a factor leading to the commission of the offense or significantly increasing its consequences; 9) committing the offense in concert with a minor or by utilizing a minor's participation.

[44] Mitigating circumstances include, in particular: 1) committing the offense due to a motive deserving of consideration; 2) committing the offense under the influence of anger, fear, or agitation justified by the circumstances of the event; 3) committing the offense in reaction to a sudden situation where a proper assessment was significantly hindered by the offender's personal circumstances, level of knowledge, or life experience; 4) taking action to prevent damage or harm resulting from the offense, or to limit its extent; 5) reconciliation with the victim; 6) repairing the damage caused by the offense or providing redress for the harm resulting from the offense; 7) committing the offense with significant contributory conduct by the victim; 8) voluntarily disclosing the offense committed to an authority responsible for prosecuting offenses.

[45] Judgment of the Court of Appeal in Kraków of 9 November 2006, Case No. II AKa 161/06, Legalis No. 83265.

who shows disregard for legal and moral norms"[46]. The reasons for that judgment were drawn up using the prescribed judicial form. The use of that form did not prevent the court from properly identifying the aggravating factors relating to the accused that had influenced the determination of the sentence. A court is under a duty to exercise particular care when explaining why it has treated particular circumstances as aggravating or mitigating. The requirements of a fair criminal trial mean that the reasoning on this issue must not be confined to a mere reference to the relevant provision of the Code of Criminal Procedure. It must address the circumstances of the individual accused and the particular facts of the case. For example, the commission of an offence for a motive deserving of particular condemnation constitutes an aggravating circumstance. The court must therefore explain in its written reasons why it considers the accused's motive to be deserving of particular condemnation. In its judgment of 2 October 2024, the Supreme Court held that an offender's motive having not been established is not equivalent to the commission of murder without any reason or for an obviously trivial reason[47]. The fact that a person has committed murder without any rational reason does not, in itself, establish that the offender acted for a motive deserving of particular condemnation.

In summary, it should be noted that the introduction of the obligation to prepare statements of reasons using official forms did not eliminate the practice of overly concise reasoning on the determination of the penalty. Even now, this portion of the statement of reasons often confines itself to citing the sentencing directives contained in article 53 of the Polish Criminal Code, without a substantive analysis of how those directives apply to the specific accused person. This, in turn, makes it more difficult to review the correctness of the reasoning and the decision-making of the court of first instance.

In the context of the readability of judgments drafted using forms, good practices relating to the language of the reasoning are also significant.

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[46] Judgment of the Court of Appeal in Katowice of 6 May 2022, Case No II Aka 130/22, LEX No. 3055805.

[47] Judgement of the Supreme Court of 2 October 2024, Case No. V KK 462/23, LEX No. 3128338.

The relevant provisions of law do not specify which language should be used, other than that the statement of reasons must be drafted in Polish. In Polish criminal procedure doctrine, it is nevertheless indicated that the statement of reasons should be, inter alia, synthetic and clear—meaning that it must set out a sufficient number of arguments supporting the correctness of the decision contained in the judgment. The language of the reasoning should also be tailored to the level of comprehension of the average addressee[48].

The statement of reasons plays a key role as a source of information for the parties to the proceedings, because the court's reasons for its ruling may be materially important when assessing whether the judgment should be subjected to review by an appellate body. The statement of reasons should produce a coherent, logical, and at the same time complete synthesis, which must not amount to a loose listing of unconnected propositions. It should be concise and persuasive, adapted to the realities of the case, the specific findings made, and the need to justify the decision; it should not have the character of a superficial exercise. The argumentation must not be overloaded with lengthy deliberations, nor grounded in an excessive number of reasons, which may create the impression that the court is not fully convinced of the correctness of its own position.

In the content of the statement of reasons, motives must not be formulated in a cursory or incomprehensible manner that leaves the recipient (including a reader of the statement of reasons) with doubts as to the actual basis of the decision. The court should speak categorically: the reasons for the judgment should demonstrate the correctness of the decision, rather than highlight hesitations. In particular, it is impermissible to use expressions suggesting uncertainty, such as "it seems" and similar formulations, since those undermine the function of the statement of reasons.

The statement of reasons should not contain digressions or questions. Its form should be factual and argumentative, devoid of the language typical of doctrinal expositions and of a polemical style.

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[48] KOŚCIELNIAK – MARSZAŁ M., Wyrok sądu I instancji w polskim procesie karnym [Judgment of the court of first instance in Polish criminal proceedings], Warsaw 2017, p.203

A judgment is the product of adjudication and decision-making; accordingly, the reasons should not take the form of a discussion or a speech. It should be borne in mind that the statement of reasons must be understandable both to the parties and to the public at large. Expressions that hinder comprehension, including Latin maxims and oratorical, laudatory or pejorative phrases burdened with epithets, which do not serve the purpose of motivating the decision, should be avoided[49]. The judge should also ensure that the language of the reasoning is not emotionally charged to such an extent that it could be perceived by the parties and the public as evidence of the judges' emotional attitude toward the case, thereby raising concerns regarding their impartiality[50].

In my view, the foregoing good practices concerning the language of the statement of reasons should apply both to statements of reasons prepared using official forms and to those prepared without such forms. The statement of reasons should be clear and readable rather than convoluted and excessively long.

4. From algorithmic assistance to judicial accountability: the role of AI and the guarantee function of sentencing reasoning

Artificial intelligence (AI) is finding increasingly broad application in various areas of our lives, including the administration of justice. AI will not replace the judge in evaluating human emotions, remorse, or the ethical dimension of justice; however, AI tools may assist in statistically comparing judgments, which can support the equal treatment of similar cases. In addition, AI can accelerate the drafting of standard passages in statements of reasons and in court forms.

The role of AI in the domain of judicial reasoning and the forms used in Polish procedural practice may be described as a potential reinforcement of the communicative, guaranteeing (guarantee) and

[49] Judgment of the Supreme Administrative Court of 9 March 2006, II OSK 632/05.

[50] HOFMAŃSKI Piotr, ZABŁOCKI S., Elementy pracy sędziego w sprawach karnych, [Elements of a judge's work in criminal cases], Warsaw 2006, p. 293

ordering functions of these procedural instruments. A judicial statement of reasons is not merely a record of the "outcome" of the adjudication, but primarily a materialisation of the reasoning process: it serves appellate review; it gives effect to the right to be informed of the grounds for the decision; and it constitutes an essential element of the standard of a fair trial. Forms, in turn, structure procedural activities, reduce the risk of errors, and standardise the manner in which information is conveyed, thereby promoting procedural efficiency and equal treatment of the parties. In this context, AI may be used as a tool for editorial and analytical support: it can help maintain a coherent structure of the statement of reasons, organise the axes of reasoning (findings of fact evidentiary assessment subsumption conclusions), improve language readability, and detect inconsistencies between the descriptive part and the argumentative layer. Moreover, AI could verify whether the statement of reasons meets minimum expectations associated with a particular type of procedure. From a scholarly perspective, therefore, the advantage of AI would be primarily qualitative and organisational rather than substitutive: the tool should reduce technical mistakes and support the transparency of decisions, thereby indirectly strengthening the guarantee function of statements of reasons.

At the same time, the development of AI applications gives rise to significant risks that cannot be reduced to technological issues. The most serious of these risks is the possibility of producing content that is apparently logical, yet substantively defective. In judicial statements of reasons, the alignment of the argumentation with the evidentiary material and the case file is of decisive importance, and the evaluation of evidence is an area strongly dependent on the specific circumstances of the individual proceeding. AI may fail to capture those nuances, omit passages that are important for reconstructing the facts, or propose an incorrect model of subsumption. The risk of hallucination i.e., generating elements not grounded in the input data is particularly dangerous when the system lacks reliable opportunities for verification based on the case file. A further set of problems concerns responsibility and the standard of due care: even if the final wording of the statement of reasons retains the character of a judicial document, the practice of intensive use of AI tools may blur responsibility for the substantive

correctness of the reasoning, and create conditions that lower the level of human control.

The need to regulate the use of artificial intelligence in judicial proceedings is also reflected in UNESCO's Guidelines for the Use of AI Systems in Courts and Tribunals[51], developed in response to the rapid and uneven adoption of AI across justice systems worldwide. The Guidelines emphasise that AI should strengthen, rather than undermine, human-led justice. They identify information security, auditability, human oversight, and the preservation of human decision-making as essential safeguards. These principles are particularly relevant to the preparation of reasons for sentence.

AI may assist in structuring the statement of reasons, identifying formal omissions, and drafting standard passages based on prescribed procedural forms. It must not, however, determine the court's findings of fact, assess the credibility of evidence, select the applicable sentencing principles, or replace the judge's legal and normative assessment.

From this perspective, the use of AI establishes a direct link between algorithmic assistance and judicial accountability. The more extensively AI is used in preparing the statement of reasons, the more important it becomes to ensure that the judge remains capable of independently explaining and defending every substantive element of the reasoning, irrespective of the system's involvement. Human oversight should therefore be understood not as the merely formal approval of AI-generated text, but as an active duty to verify the accuracy, completeness, legality, and individualisation of the reasoning. The judge should confirm that the statement of reasons is consistent with the evidence and the case file, addresses the arguments advanced by the parties, reflects the specific circumstances of the accused and the offence, and demonstrates the proper application of the relevant sentencing principles. Accordingly, AI-generated passages should always be treated as drafts requiring critical review, rather than as authoritative legal content. The legitimate role of AI

[51] https://www.unesco.org/en/articles/ai-courtroom-unescos-new-guidelines-judiciary.

is therefore to support the guarantee function of the reasons for sentence, not to displace the judge's duty to provide an individualised, transparent, and legally accountable justification for the sentence imposed.

The discussion may be developed further by reference to the judicial governance of generative artificial intelligence and the risks associated with so-called "machine opinions."[52] In the context of sentencing reasons, the central question is not merely whether AI can generate coherent or persuasive prose, but whether the resulting reasoning remains legally attributable to the judge and amenable to effective scrutiny by the parties and the appellate court. Generative AI may produce language that appears authoritative while concealing unsupported factual assumptions[53], an incomplete examination of the evidence, or an incorrect application of the relevant sentencing principles. There is therefore a risk that formal coherence may be mistaken for substantive justification.

For that reason, the use of AI in judicial reasoning should be subject to a system of cumulative safeguards. The first layer should comprise clearly defined limits on permissible uses, excluding any autonomous determination of facts, assessment of credibility, finding of guilt, or determination of sentence. The second should consist of procedural safeguards, including disclosure of the use of the system where appropriate, verification of its output against the case file, preservation of an auditable record of its use, and a prohibition on relying upon unverified, machine-generated legal authorities. The third should comprise institutional safeguards, including judicial training, technical standards, independent auditing, data-protection requirements, and effective appellate review. Together, these safeguards should prevent the emergence of "machine opinions" presented as judicial reasoning, while preserving the benefits of AI as an editorial and analytical tool.

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[52] YILIN Chen, Judicial Regulation of Generative AI "Machine Opinions": Scrutiny Dilemmas, Layered Blocking Mechanisms, and Institutional Safeguards, Transformative Society 2(2):1-30, 2026.

[53] JABOTINSKY Hadar Yoana, LAVI Michal, AI in the Courtroom: The Boundaries of RoboLawyers and RoboJudges, Fordham Intellectual Property, Media & Entertainment Law Journal, 286(2025).

Accordingly, AI-assisted reasoning should be understood as a form of algorithmic assistance, not as delegated adjudication. The judge must remain the author of the statement of reasons and must be able to explain why each material finding of fact, assessment of evidence, legal conclusion, and sentencing consideration follows from the particular circumstances of the case. The guarantee function of sentencing reasons can therefore be preserved only where the use of AI remains transparent, contestable, and subordinate to human judicial responsibility. This approach is consistent with the broader principle that the use of generative AI in the courts must be governed through a combination of substantive limitations, procedural scrutiny, layered safeguards against inappropriate reliance, and institutional accountability.

Final considerations

The relationship between the written statement of reasons for a judgment and the content of article 53 of the Polish Criminal Code is not merely functional, but above all guarantee-based (guaranty in nature). Article 53 k.k. lays down sentencing directives which cannot be treated as a purely mechanical computational algorithm, but instead require a normative assessment anchored in the specific factual circumstances of the case.

For this reason, it is only the reasons for the judgment (the statements of reasons) that make it possible to determine whether the court truly applied the sentencing directives in the sense required by substantive criminal law: whether it took into account the degree of culpability, the degree of social harmfulness, and the weight of the circumstances affecting the determination of the penalty, and then whether it translated those considerations into a decision as to the type and level of the penalty in view of the objectives of punishment. In other words, compliance of the court's reasoning with article 53 k.k. is not determined by the wording of the operative part alone, but by the manner in which the factual findings and legal assessments were correlated with the premises governing sentencing. In this perspective, the statement of reasons also functions as an intermediary between the procedural layer and the substantive-law layer: from the findings relating to the act and the offender, the court must develop arguments supporting conclusions concerning the

scope of culpability and the needs associated with both special and general prevention.

Accordingly, the statement of reasons becomes the place where it should be revealed why particular circumstances, both aggravating and mitigating, were assessed as significant and what impact they had on the determination of the penalty. Only then does article 53 k.k. cease to operate as a general norm and takes on concrete content in relation to the case at hand.

The written statement of reasons for a judgment is intrinsically guarantee-based in relation to article 53 of the Polish Criminal Code. Article 53 sets sentencing directives that must be normatively assessed in light of the specific case, not applied mechanically. It is therefore the reasoning, not the operative part, that enables evaluation of whether the court properly considered culpability, social harmfulness, and relevant aggravating and mitigating circumstances, and then translated those findings into the type and level of the penalty consistent with the aims of punishment. The reasons serve as an intermediary between procedural findings and substantive sentencing law by explaining how particular facts and assessments support conclusions regarding culpability and preventive needs.

From the perspective of the guarantee function, the statement of reasons limits the risk of arbitrariness and enables appellate review. The appellate instance and the parties to the proceedings may verify whether the court relied merely on general formulae, or whether it actually conducted reasoning leading, from the factual findings, to the determination of the penalty, within the bounds of judicial discretion, while still complying with the requirements of rationality and legality.

As a result, the statement of reasons becomes a document that makes it possible to assess whether the directives of article 53 of the Polish Criminal Code were applied in a manner that individualized the decision, or whether they were in effect "neutralized" in a hidden manner through generality, schematization, or selective consideration of circumstances that are relevant. Where the motives relating to the penalty are developed insufficiently, article 53 k.k. is effectively reduced to a declaration; it no longer functions as the basis for real, reviewable reasoning about the legitimacy of the penalty.

The obligation to prepare statements of reasons using official forms does not, in itself, constitute a violation of the party's right to a fair criminal trial. Undoubtedly, the proposal to amend article 99a of the Polish Code of Criminal Procedure, which aimed to leave the decision on whether to draft the statement of reasons using a form to the judge, should be assessed positively. A judge who knows the case and who delivered the judgment should be best placed to decide which form of reasoning will be most comprehensible to the parties and will most clearly convey the court's reasoning. At the same time, it must be emphasized that drafting the statement of reasons using a form cannot be limited to the cursory listing of circumstances affecting the determination of the penalty. Those circumstances must relate to the specific case and reflect its particular features.

The use of artificial intelligence to expedite the drafting of passages in the reasons for judgments prepared using prescribed forms should be regarded solely as an auxiliary activity subject to strict supervision. AI may generate preliminary wording, suggest an appropriate structure for the reasoning, identify omitted procedural elements, and assist in adapting standardised passages to the formal requirements applicable to the particular type of proceedings. It may also compare a draft of the reasons with the court's findings of fact, its assessment of the evidence, the legal classification of the offence, and the factors relevant to sentencing, thereby assisting in the detection of inconsistencies or gaps in the reasoning.

Nevertheless, the use of standardised or AI-generated wording must not result in the automatic reproduction of reasons prepared in other cases. Each judgment must demonstrate that the court independently assessed the evidence, addressed the parties' arguments, and applied the relevant sentencing principles to the specific factual circumstances of the case. The judge must therefore retain full control over the content, verification, and final approval of the document.

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